

FEDERAL COMMUNICATIONS COMMISSION

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October 11, 2001

Mr. David D. Burns
Paul, Hastings, Janofsky & Walker, L.L.P.
10th Floor
1299 Pennsylvania Avenue NW
Washington, DC 20004-2400

In re: KAYD-FM, Beaumont, TX
Cumulus Licensing Corp.
Construction Permit BPH-19991123AGM
Facility ID No. 52407

K247AF, Galveston, Texas
License BLFT-19970616TC
Facility ID No. 81127

Dear Mr. Burns:

By letter dated October 5, 2001 you filed a request asking that the Commission suspend the operating authority of FM translator station K247AF, Galveston, TX. You indicated that KAYD's signal suffers interference from K247AF in its newly expanded service area, but provide no evidence of listener complaints. A copy of this pleading was served on counsel for the licensee of the translator station.

In a separate letter dated October 5, 2001 (copy attached) -- which was NOT served on the licensee of K247AF -- you state that the antenna for KAYD-FM is not operating properly. Therefore you request that the Commission allow KAYD-FM to delay the filing of its license application until after the problems have been corrected and after the Commission rules on the pleading seeking cessation of K247AF's operations.

We deny both requests. Given that KAYD-FM's equipment is not operating properly, it is impossible to say whether the "interference" is due to the translator operation or KAYD-FM's own admittedly unsatisfactory operation. Thus the pleading is premature. We will consider a complaint from KAYD-FM regarding K247AF only once it is able to certify that its operation is stable and compliant with the provisions of its construction permit.

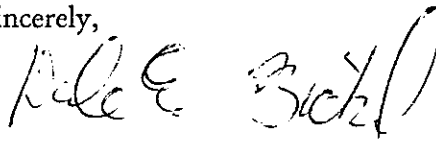
Second, the salient standard for considering whether a translator station should be required to cease operation is the presence of *actual* interference (*see* 47 CFR Section 74.1203), not merely predictions of *potential* interference. Documented listener complaints are integral to proving the presence of actual interference, but no such complaints have been provided here. We see no reason to exempt KAYD-FM from the requirement to document actual interference. The fact that KAYD-FM did not serve the area in the vicinity of the translator station before (and thus has no "historical audience" in that area) does not justify exemption from this requirement.

Finally, if KAYD-FM continues to operate with its construction permit operation, the station should file a license application to cover that construction permit immediately. The station may include a request with the license application to temporarily defer processing while KAYD-FM compares the operation of the permit

facility with the present licensed operation. This would allow KAYD-FM to operate its licensed facility as needed while repairs are being made.¹ We will not extend the license application filing date beyond the 10 day period specified in 47 CFR Section 73.1620.

In conclusion, the pleading filed against the operation of translator station K247AF and the request to extend the period for filing a license application on FCC Form 302-FM ARE DENIED.

Sincerely,



Dale E. Bickel
Senior Electronics Engineer
Audio Services Division
Mass Media Bureau

Attachment

cc: Gammon & Grange, P.C.
The KSBJ Educational Foundation

¹ If, however, the KAYD-FM construction permit facility is only being tested for brief periods, this would fall under the equipment test provisions of 47 CFR Section 73.1610 and a license application need not be filed at this time. *See also* 47 CFR 73.1615, 73.1635 for alternatives. In either case, construction must be completed and the license application must be filed before the expiration date on the construction permit.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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davidburns@paulhastings.com

October 5, 2001

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VIA MESSENGER

Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals II
445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Station KAYD-FM, Beaumont, Texas (Facility I.D. No. 52407);
Continuation of Program Tests Pursuant to Construction Permit for Minor
Modification to Licensed Facility (File No. BPH-19991123AGM)

Dear Ms. Salas:

We represent Cumulus Licensing Corp. ("Cumulus"), which holds an outstanding construction permit from the Commission that authorizes Cumulus to make minor modifications to the facilities of commercial FM radio broadcasting station KAYD-FM, Beaumont (File No. BPH-19991123AGM). Station KAYD-FM bears the Commission's Facility Identification Number 52407.

On September 25, 2001, Cumulus notified the Commission of commencement of program tests by Station KAYD-FM. During the course of program tests, it has become clear that the antenna installed at the new KAYD-FM site is not functioning correctly. In addition, Cumulus has become aware that FM Translator K247AF is causing interference to a substantial number of listeners within the protected (60 dBu) contour of Station KAYD-FM.

Contemporaneously with the filing of this letter, Cumulus is filing with the Commission a Request for Suspension of K247AF's operations pursuant to Section 74.1203 of the Commission's Rules. Cumulus believes that the termination of broadcasting by FM Translator K247AF will enable Station KAYD-FM's facilities to provide interference-free service to the listeners within its protected contour. In the interim, until the Commission acts on Cumulus' request for suspension of FM Translator K247AF's operations and Cumulus can confirm that Station KAYD-FM's

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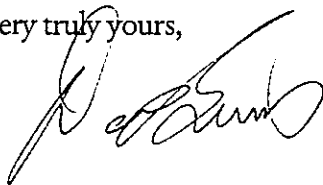
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Magalie Roman Salas
October 5, 2001
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facilities are operating as contemplated, Cumulus intends to operate from time to time with the licensed facilities of Station KAYD-FM. Once the interfering translator ceases operation, Cumulus can better determine what additional equipment modifications need to be made to the antenna. Cumulus will then need to perform program testing for an additional period of time for that purpose. Thus, Cumulus requests that it be permitted an extension of the normal 10 day period in which to file Form 302-FM while program testing continues.¹

In the event that the Commission or its staff should have any questions with respect to this notification, kindly refer them to Cumulus' undersigned counsel.

Very truly yours,



David D. Burns
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: John Dickey

Scott Gilreath (for placement in the public inspection file for station KAYD-FM)

¹ In Cumulus' letter notifying the Commission of commencement of program tests, Cumulus indicated that it intended to request special temporary authority to operate from the licensed KAYD-FM site as an auxiliary antenna. However, because that site is currently licensed, Cumulus believes that such authority is not necessary. Instead, as described above, Cumulus intends to continue program tests from the modified facilities, but to broadcast from the licensed facilities from time to time as necessary. As noted above, Cumulus' request for an extension of the period in which to file an application for a license to cover construction of the new facilities pending resolution of the problems with those facilities remains in effect.